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**10. New Trial (§ 102\*)—Newly Discovered Evidence—Diligence.**—There was no error in overruling a motion for a new trial on the ground of after-discovered evidence, where it does not appear that it could not have been discovered before trial by reasonable diligence.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. §§ 210-214; Dec. Dig. § 102.\* 10 Va.-W. Va. Enc. Dig. 448.]

Judgment affirmed. All the judges concur.

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CHESAPEAKE & O. RY. CO. v. HUNTER.

March 11, 1909.

[64 S. E. 44.]

**1. Negligence (§ 111\*)—Pleading—Insufficiency of General Allegations.**—It is not sufficient for the declaration to allege negligence in a general way, but it must aver the acts relied on with reasonable certainty and show that they constitute the efficient and proximate cause of the injury.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. § 182; Dec. Dig. § 111.\* 10 Va.-W. Va. Enc. Dig. 397.]

**2. Pleading (§ 11\*)—Facts of Evidence—Declaration.**—The declaration in a personal injury case need only contain a concise statement of the material facts on which recovery is demanded, without pleading the evidence relied on to sustain its averments.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 31; Dec. Dig. § 11.\* 10 Va.-W. Va. Enc. Dig. 397.]

**3. Master and Servant (§ 258\*)—Injury to Servant—Declaration—Allegations of Negligence.**—The declaration, in an action by an employee against his master for personal injury from the fall of a rail upon him, held to insufficiently charge the acts of negligence relied on.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 816-836; Dec. Dig. § 258.\* 10 Va.-W. Va. Enc. Dig. 397; 9 Id. 718.]

Judgment reversed. All the judges concur.

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NORFOLK & W. RY. CO. v. HOLMES' ADM'R.

March 11, 1909.

[64 S. E. 46.]

**1. Railroads (§ 309\*)—Crossings—Care Required.**—A railroad company must exercise care to avoid a collision at a highway crossing, and, the greater the danger, the greater is the vigilance required.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 981; Dec. Dig. § 309.\* 3 Va.-W. Va. Enc. Dig. 127.]

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\*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

**2. Trial (§ 158\*)—Demurrer to Evidence.**—On a demurrer to the evidence, the facts which the evidence demurred to tends to establish must be taken as true, and the evidence of the party demurring must be rejected.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 354, 355; Dec. Dig. § 156.\* 3 Va.-W. Va. Enc. Dig. 522.]

**3. Railroads (§ 312\*)—Highway Crossings—Care Required.**—Independently of any statute or ordinance, a lookout must be employed when a train is backed over a crossing in a frequented street, and merely ringing the bell or sounding the whistle when a train is standing near with its rear to the crossing is not sufficient warning to pedestrians of an intention to back the train; and without other notice the company is negligent.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 999; Dec. Dig. § 312.\* 3 Va.-W. Va. Enc. Dig. 130, et seq.]

**4. Railroads (§ 350\*)—Street Crossings—Care Required—Negligence—Question for Jury.**—Whether it is negligence for trainmen to run an engine backwards over a crossing in a frequented street, without stationing some one on the tender to signal its approach to one who may be on the track, is ordinarily for the jury, though under some circumstances the act may be negligence as a matter of law.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1162; Dec. Dig. § 350.\* 3 Va.-W. Va. Enc. Dig. 143.]

**5. Railroads (§ 345\*)—Street Crossings—Care Required—Negligence.**—Where it is negligence to operate an engine backwards without having a flagman or a man on the tender, the absence of such precautions may be proven to establish the negligence of the railroad company, without reference to the existence, pleading, or proof of a municipal ordinance on the subject, provided the allegations of the declaration are sufficient to justify the admission of such evidence.

[Ed. Note.—For other cases, see Railroads, Dec. Dig. § 345.\* 3 Va.-W. Va. Enc. Dig. 131.]

**6. Railroads (§ 345\*)—Accidents at Crossings—Declaration—Evidence.**—Where, in an action for the death of a pedestrian struck by an engine at a street crossing, the declaration set out in detail the peculiarities of the crossing, alleged that the tracks were flush with the pavement of the street, so that persons unfamiliar with the locality would not discern their presence; that the company was required to exercise reasonable care to keep watch so as to avoid running into pedestrians and to give warning of the approach of trains by ringing the bell or other means; and that it failed to do so—evidence that there was no flagman, no person riding on the front of the engine, and that the engineer could not see from his cab, and that there was no light burning, no bell ringing, was admissible to prove negligence.

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\*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

[Ed. Note.—For other cases, see Railroads, Dec. Dig. § 345.\* 3 Va.-W. Va. Enc. Dig. 130, 142.]

**7. Railroads (§ 344\*)—Accidents at Crossings—Pleadings.**—The declaration in an action against a railroad company for the death of a pedestrian struck by a train at a crossing need not allege in detail all the methods of precaution that the railroad company might or ought to have taken to give timely warning of the approach of the train, but the particular duty must be alleged, and its violation must be charged.

[Ed. Note.—For other cases, see Railroads, Dec. Dig. § 344.\*]

**8. Railroads (§ 348\*)—Accidents at Crossings—Negligence.**—In an action for the death of a pedestrian struck by an engine at a street crossing, evidence held to show actionable negligence, authorizing a recovery.

[Ed. Note.—For other cases, see Railroads, Dec. Dig. § 348.\* 3 Va.-W. Va. Enc. Dig. 128; 142.]

**9. Railroads (§ 348\*)—Accidents at Crossings—Contributory Negligence.**—In an action for the death of a pedestrian struck by an engine at a street crossing, evidence held to show that decedent was free from contributory negligence.

[Ed. Note.—For other cases, see Railroads, Dec. Dig. § 348.\* 3 Va.-W. Va. Enc. Dig. 135, et seq.]

**10. Evidence (§ 588\*)—Weight of Evidence.**—The jury may discredit the testimony of a witness where the same is inherently unsatisfactory.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2437; Dec. Dig. § 588.\* 5 Va.-W. Va. Enc. Dig. 354; 13 Id. 974.]

Judgment affirmed. Keith, P., & Cardwell, J., absent.

**Note.**

As to disregarding testimony of unimpeached witness, see editorial note to Clopton *v.* Com., 15 Va. Law Reg. 132.

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NORFOLK & W. RY. CO. *v.* MUNSELL'S ADM'R.

March 11, 1909.

[64 S. E. 50.]

**1. Railroads (§ 351\*)—Accidents at Crossings—Evidence—Instructions.**—Where, in an action for the death of a pedestrian struck by an engine at a street crossing, the evidence showed that the place of the accident was one of peculiar danger to pedestrians, because they could not see an approaching engine nor could the engineer see pedestrians approaching, and that the street was a populous thoroughfare, an instruction that the greater the danger the greater the vigilance re-

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\*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.